

1 Andrew J. Christensen (SBN: 260748)  
2 Law Offices of Andrew J. Christensen, P.C.  
2063 Mountain Blvd. Suite 2  
3 Oakland, CA 94611  
Tel: (510) 761-7183  
Fax: (510) 680-3430  
4 Andrew@CaliforniaHomeLawyer.com

5 Attorney for Debtor Melissa Wilkerson

6 UNITED STATES BANKRUPTCY COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 In the Matter of:

9 Melissa Wilkerson  
10 Debtor

Bankruptcy Case: 25-40564 CN

Chapter 13

11 **Status Conference Statement on Motion for**  
12 **Damages for Violation of the Automatic**  
**Stay**

13 Hearing REMOTE OR IN PERSON

14 Date: September 12, 2025

15 Time: 11:00 a.m.

Place: Courtroom 215

16 1300 Clay Street, Oakland CA 94612

The Honorable Charles Novack

17 18 19 20 Melissa Wilkerson hereby files this Status Conference Statement regarding her *Motion for Damages for Violation of the Automatic Stay* against NewRez LLC dba Shellpoint Mortgage Servicing, NBS Default Services, LLC, (“NBS”) and Good Neighbor Homes LLC, (“GNH”) (jointly “Creditors”) for proceeding with a foreclosure sale in violation of the automatic stay.

21 22 23 This statement is pursuant to this Courts order, docket 70, requiring a statement regarding: “a. Whether there is a factual dispute about the time of the bankruptcy filing. b. Whether the parties believe there are any other factual disputes that the court is required to resolve.”

24 25 26 27 28 Debtor’s position is that there is no factual dispute about the time of the bankruptcy filing because there was no objections to Debtor’s declarations and no conflicting evidence was submitted by Respondents as to the time of filing, therefore there is no need for an evidentiary hearing or further discovery on that issue. Therefore, this Court can simply find on the uncontested evidence that the petition was filed at 9:06 am.

1 Debtor believes that it should not be required to resolve any other factual disputes by  
2 evidentiary hearing because on the undisputed facts Respondents are all liable for violating the  
3 automatic stay as set forth in the Motion on account of §2924m. Debtor's reply briefs explain that  
4 all material facts necessary to find liability and award damages are undisputed.

5 However, there are a few factual findings that need to be made on issues where all the  
6 evidence establishes only one conclusion but where Respondents make unsupported counterfactual  
7 arguments.

8 A. Facts Related to Estoppel

9 Shellpoint argues that it rescinded the foreclosure sale "immediately" upon learning of the  
10 9:06 am filing time. Shellpoint argues that it "expressly relied on the 9:19 a.m. filing time to its  
11 injury." Shellpoint argues that "Debtor clearly intended that SMS act on the 4/11/2025 Demand  
12 Letter and the 9:19 a.m. filing time by demanding a rescission of the Foreclosure Sale based on the  
13 9:19 a.m. filing time." These are all allegations of fact by counsel without any evidentiary support.  
14 These allegations are not supported by declaration or documents. Therefore, Debtor's position is  
15 that they are not legitimate issues of fact that require discovery or an evidentiary hearing and the  
16 Court may simply make the factual findings that Shellpoint rescinded the completed foreclosure  
17 sale to avoid litigation risks as set forth in the extensive email correspondence, and that Shellpoint  
18 did not rely on the 9:19 filing time to its injury when refusing to cancel the foreclosure sale because  
19 arguments of counsel are not evidence, and that Debtor did not intend Shellpoint to rely on the 9:19  
20 filing time by refusing to cancel the sale because there is no evidence of this and it is patently absurd.  
21 On this basis the Court should reject the estoppel argument because there is no evidence to support  
22 these claims and therefore these are not legitimate disputes of fact that require discovery or an  
23 evidentiary hearing. Shellpoint has the burden to establish these facts and failed to submit evidence  
24 and should not be allowed further opportunity to support these baseless claims. Therefore, Debtor  
25 requests that the Court address these issues at the hearing.

26 Shellpoint argues that "SMS was ignorant of the 9:06 a.m. filing time." This allegation of  
27 fact is based on Shellpoint's declaration, but there is doubt as to its truth because the recordings of  
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1 the telephone calls where they received notice have not been produced. Debtor believes this is not  
2 a material fact and need not be resolved in order for the Court to rule for Debtor because none of  
3 the other facts regarding estoppel are established so it is unnecessary to reach this point because it  
4 would not affect the outcome even if true. However, to the extent the Court believes it is relevant,  
5 the call recordings and servicing notes can be produced in discovery to get to the bottom of it.

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7       B. The Reason Respondents Rescinded the Foreclosure Sale

8           The reasons that Respondents cancelled the foreclosure sale are material facts for the Court  
9 to decide related to punitive damages because the evidence shows they rescinded the sale out of fear  
10 of litigation, but Respondents' counsel argues it was rescinded upon learning of the 9:06 am filing  
11 time. However, Debtor's position is that there is not a material dispute of fact on this issue, but that  
12 the emails and declarations and judicial admissions plainly establish Respondents rescinded the  
13 foreclosure to avoid litigation exposure after this Motion was filed and that the arguments of NBS  
14 and Shellpoint in their briefs that they cancelled the sale upon learning of the 9:06 filing time when  
15 the Motion was filed are simply unsubstantiated arguments of counsel that are plainly undermined  
16 by the extensive email correspondence produced in discovery and attached to Debtor's Reply briefs  
17 docket 55 and 60.

18           Debtor believes that the Court should make the factual finding that Respondents only  
19 cancelled the sale after this Motion was filed and only after they could not scare Debtor into  
20 withdrawing it and that it was not withdrawn based on learning of the 9:06 filing time. Debtor  
21 believes the evidence before the Court on this point is substantial and unambiguous and that no  
22 further discovery or evidentiary hearing is required on that point. However, if the Court believes  
23 further evidence on this point would be helpful, Debtor proposes that the Court enter an order that  
24 Respondents willfully violated the automatic stay and that the matter proceed forward for discovery  
25 and evidentiary hearing on this narrow factual issue for purposes of punitive damages only, not  
26 underlying liability.

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C. When the Foreclosure Sale was Deemed Final

The Court will need to make the factual finding that the foreclosure auction was deemed final by NBS after the 45<sup>th</sup> day, and not on April 1, 2025, the day the auction started. This fact is critical to the case, and likewise Debtor's position is that all evidence before the Court leads to the conclusion that it was deemed final after the 45<sup>th</sup> day but on or before May 19, 2025, when NBS left the voicemail for GNH notifying it that it was the winning bidder. There are only unsubstantiated arguments of counsel claiming the sale was final on April 1, 2025, at 9:14 am, but there is no evidence to support a factual finding on this point and therefore there is no need for further discovery or evidentiary hearing. This is technically a factual issue of when NBS took the steps to deem the sale final, and not a legal argument about when a sale is final under §2924m and 2924h. Debtor's reply briefs address this in detail sufficient for the Court to make a factual finding on this point. Respondents had the opportunity to present evidence on this point but failed to submit evidence showing anything other than that NBS reviewed the file after the 45<sup>th</sup> day and determined GNH was the high bidder, accepted the bid at that time and notified GNH.

15 This fact about the point in time that NBS and Shellpoint took the actions to deem the sale  
16 final are relevant because Shellpoint argues and states in a declaration that the sale “was completed  
17 on 4/01/2025 at 9:14 a.m.” However, Debtor does not believe that this rises to the level of a dispute  
18 of fact, but rather it is an issue of Respondents’ counsel making counterfactual arguments. The fact  
19 is that the sale was deemed final sometime after the 45<sup>th</sup> day and either before or at the time NBS  
20 communicated by voicemail and email to GNH that it was the winning bidder, which fact is based  
21 on various emails, a voicemail, and admissions in briefing that the sale was held open for 45 days  
22 on account of the notice of intent to bid and that the winning bidder would not be known until the  
23 45<sup>th</sup> day, clearly establishing that the sale was not deemed final until after the 45<sup>th</sup> day. However,  
24 Respondents made arguments running counter to those facts, such as that the home was not property  
25 of the estate because the sale was completed pre-petition.

26 There is no evidence to support the allegation that the sale was “deemed final” by NBS on  
27 April 1, 2025, or otherwise before the 45<sup>th</sup> day, and the arguments of counsel are not evidence.

1 However, Debtor believes it is important that the Court acknowledge that the foreclosure auction  
2 that began on April 1, 2025, continued until at least the 45<sup>th</sup> day at 5:00 pm and was not deemed  
3 final any earlier. The facts relevant to this issue are discussed in Debtors' two reply briefs. If the  
4 Court believes that there is conflicting evidence on the point in time when NBS deemed the sale  
5 final, then Debtor requests the opportunity to address the matter at the hearing in more detail, and  
6 then if necessary, further discovery. However, this should not be necessary because Debtor believes  
7 the existing evidence is sufficiently clear on this point.

8 The point in time that the sale was deemed final is important because NBS argues "Debtor  
9 does not provide any evidence that NBS took any affirmative acts." Debtor believes the evidence of  
10 affirmative acts is plentiful and is laid out in the Reply briefs. However, to the extent the Court  
11 believes further evidence or argument on this is necessary, Debtor is willing to address it and submit  
12 or pursue further evidence on this point. It is sufficient for purposes of the Motion that the Court  
13 find based on the undisputed facts that after the 45<sup>th</sup> day NBS took the affirmative act of deeming  
14 the sale final either before or at the time NBS communicated this to GNH on May 19, 2025.

15 **D. Trustees' Deed Upon Sale**

16 There is a dispute of fact as to whether a trustee's deed upon sale was executed, or delivered  
17 by NBS, or received or accepted by GNH. It is undisputed that no TDUS was recorded in the county  
18 recorders' office, but that does not mean it was not executed and delivered. All three Respondents  
19 deny that there was a TDUS. However, there are emails strongly suggesting that a TDUS was created  
20 and sent to GNH as discussed in the Reply Briefs.

21 However, as to GNH there are other undisputed facts that establish liability for violating the  
22 automatic stay such as the fact that they learned of the bankruptcy case on May 19, 2025, but the  
23 sale was not cancelled until May 30, 2025, eleven days later, and only after this Motion was filed  
24 and only after Debtor refused NBS's demand to withdraw the Motion. Therefore, Debtor's position  
25 is that the Court can find liability as to GNH for willfully violating the stay by not affirmatively  
26 taking action to cancel or rescind the sale or back out of the transaction. However, to the extent the  
27 Court finds this to be insufficient for liability as to GNH, Debtor will proceed with depositions of  
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1 employees of GNH and foreclosure trustee NBS to get to the bottom of whether a TDUS was  
2 executed, delivered, or accepted.

3       However, the Court may enter an order on liability and damages as to the three Respondents  
4 separately, and find NBS and Shellpoint liable for their acts that violate the stay for affirmatively  
5 refusing to stop the sale for nearly two months after receiving notice of the bankruptcy, deeming the  
6 sale final after the 45<sup>th</sup> day, communicating the finality of the sale to GNH, and the other acts  
7 established by the evidence in this case. If NBS executed, issued, or delivered a TDUS that would  
8 also violate the stay, but the other violations are sufficient for liability, so it is unnecessary to delay  
9 ruling as to NBS and Shellpoint for discovery on the TDUS.

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12 Date: September 9, 2025

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/s/ Andrew J. Christensen

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Andrew J. Christensen  
Attorney for Melissa Wilkerson

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